

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

IN RE EQUIFAX, INC., CUSTOMER  
DATA SECURITY BREACH  
LITIGATION

MDL DOCKET NO. 2800  
1:17-MD-2800-TWT  
CONSUMER ACTIONS

**APPLICATION FOR APPOINTMENT OF MARK S. GOLDMAN, ESQ. AND  
GOLDMAN, SCARLATO & PENNY, P.C. AS A MEMBER OF THE STEERING  
COMMITTEE FOR THE CONSUMER PLAINTIFF CLASS**

By this Application, Mark S. Goldman (“Mr. Goldman”) of Goldman Scarlato & Penny, P.C. applies to serve on the Steering Committee for the consumer class in the above-captioned litigation.

Goldman Scarlato & Penny, P.C. (“GSP”) partner Mr. Goldman, has over thirty years’ experience representing plaintiffs in class actions in the areas of consumer protection, securities fraud and antitrust. For the past several years, Mr. Goldman has focused his practice on representing victims of identity theft and data breaches in numerous cases filed throughout the country. Through those actions, identity theft victims have been holding accountable companies that – like Equifax -- have failed to take steps to protect their customers’ and the public’s most personal information.

Most recently, Mr. Goldman played a significant role in the data breach litigation brought against Anthem, Inc. and dozens of Blue Cross Blue Shield organizations (one of the largest data breach cases to date). In that matter, he was responsible for defending over twenty-five of the class plaintiffs’ depositions. This required him to work closely with each identity theft and data breach victim, as he prepared them for depositions, and then defend each of those depositions in

locations around the country. The process lasted several months and required a significant investment of time and resources as Mr. Goldman travelled around the country to personally work with and defend these victims. In addition, the large number of class representatives required significant coordination with each witness, plaintiffs' co-lead counsel and counsel for defendants. Through the process, Mr. Goldman worked collaboratively with co-lead counsel and other counsel on the case. Indeed, Mr. Goldman has earned a reputation for working cooperatively with other plaintiffs' attorneys in the prosecution of numerous cases over his career. The *Anthem* litigation, and the other data breach litigations in which he has been involved, attest to the quality of his work and his ability to work with others. Mr. Goldman seeks to bring this experience and perspective to the Steering Committee in this matter.

Founded in 2005, GSP is a nationwide plaintiff's rights and class action law firm. Its lawyers have dedicated their careers to vindicating the rights of individuals victimized by corporate misconduct, and deceptive consumer practices. The firm has the personnel and financial resources to commit to prosecuting this litigation on behalf of Equifax victims. Since its founding, GSP's focus has been, and always will be, on providing zealous advocacy for its clients and on protecting the rights of those who do not hold a position of power against those who do.

### **THE EQUIFAX LITIGATION**

Based on the firm's investigation to date, it appears that Equifax databases containing hordes of consumer data were hacked sometime before May 2017. Between May 2017 and July 30, 2017, that intrusion went undetected by Equifax. More than a month after its detection, Equifax finally notified the public of the breach and its impact on over 143 million Americans. The notification program did not go smoothly. Several of GSP's clients immediately contacted

GSP to seek advice on how to protect themselves in the wake of the Equifax data breach, and several former clients and new victims retained the firm to represent them in this litigation. GSP is counsel of record in the following Equifax cases filed in this Court: *Green et al. v. Equifax*, Case No. 1:17-cv-03487 (N.D. Ga.); and *Larson et al. v. Equifax*, Case No. 1:17-cv-03905 (N.D. Ga.).

### **GSP'S EXPERIENCE IN DATA BREACH/IDENTITY THEFT LITIGATION**

GSP serves as sole lead counsel in two identity theft/data breach cases pending in the Eastern District of Michigan and in the Superior Court of Athens-Clarke County, Georgia: *Leibovic v. United Shore Financial Services, et al.*, Case No. 15-12639 (E.D. Mich. Southern Div.)(“*United Shore*”), and *Collins, et al. v. Athens Orthopedic Clinic, P.A.*, Case No. 17-CV-0089 (Athens-Clarke County, Ga.)(“*Athens Orthopedics*”); and serves on the executive or steering committee in both *In re Community Health Systems, Inc. Customer Data Security Breach Litigation*, 15-cv-222 (N.D. Ala. 2015), and *In re Intuit Data Litigation*, Master Docket No. 15-CV-1778-EJD (N.D. Cal.). GSP also served on the briefing committee in *In re Target Corporation Customer Data Security Breach Litigation*, MDL No. 14-2522 (PAM/JJK)(D. Minn.). In addition, GSP is counsel to identity theft and data breach victims in the following pending cases:

- *In re 21<sup>st</sup> Century Oncology Customer Data Security Litigation*, Case No. 8-16-md-2737-MSS (M.D. Fla. Tampa Div.);
- *In re Anthem, Inc. Data Breach Litigation*, Case No: 15-md-02617-LHK (N.D. Cal. San Jose Div.)(“*Anthem*”);
- *Fero et al. v. Excellus Health Plan, Inc., et al.*, Case No. 6:15-cv-06569 (W.D.N.Y.);
- *In re Medical Informatics Engineering, Inc. Customer Data Security Breach Litigation*, Case No. 3:15-md-2667 (N.D. Ind.);

- *In re Premera Blue Cross Customer Data Security Breach Litigation*, Case No. 3:15-cv-01115-SI (D. Ore.); and

Having played key roles in these data breach cases, GSP is quite familiar with many of the factual and legal issues that will likely arise in the *Equifax* litigation, such as those related to standing, causation, duties to maintain adequate data security, and the various theories of damages that should be advanced in a case like this.

### **GSP'S COMMITMENT TO THE EQUIFAX LITIGATION**

If appointed to the Steering Committee by the Court, GSP makes a full commitment to devote the time and resources required to bring about a successful, timely resolution to the litigation, just as it has in the data breach cases in which it serves as sole lead counsel. In these cases, GSP has made the significant financial commitment to fund them, advancing filing fees, the cost of discovery (including experts), and costs associated with travel. GSP will make the same commitment of time and resources if selected for the Steering Committee in this case.<sup>1</sup>

In addition, GSP commits to the cooperative litigation style that has benefited its clients in the *Anthem*, *Community Health*, *Target*, and *Intuit* data breach lawsuits, cases in which the firm has played key roles in litigation where other firms were appointed lead counsel by the court. In the *Anthem* case, Mr. Goldman worked closely with co-lead counsel to prepare and defend not only his clients, but named plaintiffs who retained other firms, for their depositions. Mr. Goldman would welcome the opportunity to play a similar role in this case, where plaintiffs from around the country have stepped up and brought suit against Equifax to hold it accountable.

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<sup>1</sup> The firm anticipates that Mr. Goldman will be the primary lawyer involved in the *Equifax* litigation, but if selected to the plaintiffs' Steering Committee, firm lawyers Paul Scarlato, Brian Penny and Douglas Bench will be fully committed to the litigation if additional resources are required.

The firm's commitment to the Equifax case is not limited to Mr. Goldman. In addition, partners Paul J. Scarlato and Brian D. Penny have actively participated in data breach litigation in cases in which the Firm is engaged. Their involvement includes all phases of the cases from drafting and editing pleadings, to successfully arguing dispositive motions, participating in strategy sessions involving discovery and litigation options, and playing a key role in mediation.

### **GSP'S EXPERIENCE IN CLASS ACTION LITIGATION**

Since 1986 GSP attorneys have been fighting to protect small investors misled by unscrupulous corporate executives, victims of false advertising scams, and small businesses that purchased goods and services from price-fixing suppliers. In 2017, the Firm expanded its practice to include a mass torts department lead by Partner Melissa Fry Hague.

The Firm has played prominent roles in numerous noteworthy and ground-breaking cases. Just by way of example, GSP fought for individuals whose most sensitive and private data was compromised in *In re Anthem, Inc. Data Breach Litigation* (\$115 million settlement on behalf of healthcare patients), and *In re Target Corporation Customer Data Security Breach Litig.* (\$10 million settlement fund on behalf of consumers). It has fought to enforce the nation's antitrust laws and ensure a level competitive playing field in cases such as *In re Air Cargo Antitrust Litigation* (settlements of over \$1 billion), *In re Vitamins Antitrust Litigation* (settlements of over \$1.7 billion), *In re Brand Name Prescription Drugs Antitrust Litigation* (settlements of approximately \$700 million), and *Logue v. West Penn Multi-Listing Service* (\$2.75 million settlement on behalf of consumers), and it successfully challenged businesses that misrepresented their products to consumers in *Mirakay v. Dakota Growers Pasta Co.* (settlement valued at over \$23 million). In addition, the Firm has fought to protect investors and enforce the nation's securities laws in cases such as *In re Broadcom Securities Litigation* (settlement of \$150

million), and *AOL Time Warner Securities Litigation*, (settlement of over \$2.5 billion for investors). The Firm has also played important roles in difficult and cutting-edge cases involving issues important to the public in cases such as *In Re NHL Concussion Litigation* (D. Minn. 2014) (alleging league failed to protect players from known risks of concussions).

The Firm currently serves as lead or co-lead counsel in *Leibovic v. United Shore* (alleging failure to protect customers' private data and information); *Afzal v. BMW of North America, LLC*, Case No. 15-08009 (D.N.J.) (alleging product defect leading to catastrophic engine failure), and *Yao Yi Liu v. Wilmington Trust Company*, 14-cv-06631 (W.D.N.Y.) (alleging breach of fiduciary duty and aiding and abetting a Ponzi scheme), among others.

The Firm is also serving as one of class counsel in other prominent class actions, including: *In re Intuit Data Litigation*, (executive committee member); *In Re NHL Concussion Litigation* (D. Minn. 2014) (executive committee member); *In re Community Health Systems, Inc. Customer Data Security Breach Litigation*, (executive committee member); *In re Target Corporation Customer Data Security Breach Litig.*, (complaint committee); *In re Air Cargo Antitrust Litigation* (E.D.N.Y. 2006) (co-chair of the expert's committee); *In re Aftermarket Automotive Products Antitrust Litigation* (E.D. Mich. 2012); and *In re Ductile Iron Pipe Fittings (DIPF) Direct Purchaser Antitrust Litigation* (D.N.J. 2012).

The Firm also serves on Plaintiffs' Steering Committee in *In Re: Zofran (Ondansetron) Products Liability Litigation*, MDL 2657, a case brought on behalf of children born with birth defects as a result of in utero exposure to the drug Zofran.



## **THE FIRM'S ATTORNEYS**

### **I. MARK S. GOLDMAN**

Since 1986, Mark Goldman has concentrated his practice in many different types of complex litigation, including data breach litigation, cases involving violations of the federal securities and antitrust laws and state consumer protection statutes. Mr. Goldman served as co-lead counsel in a number of class actions brought against life insurance companies, challenging the manner in which premiums are charged during the first year of coverage. In the antitrust field, Mr. Goldman litigated several cases that led to recoveries exceeding \$1 billion each, for the benefit of the consumers and small businesses he represented, including *In re Air Cargo Antitrust Litigation*, *In re Vitamins Antitrust Litigation*, *In re NASDAQ Antitrust Litigation*, and *In re Brand Name Prescription Drugs Antitrust Litigation*. Mr. Goldman currently represents numerous victims of identity theft seeking to hold accountable companies that failed to protect the safety of private data maintained on their networks, including *In re Community Health Systems, Inc. Customer Data Security Breach Litigation*, *In re Anthem, Inc. Data Breach Litigation*, *In re Intuit Data Litigation*, and *In re Medical Informatics Engineering, Inc. Customer Data Security Breach Litigation*. In the area of securities litigation, Mr. Goldman played a prominent role in class actions brought under the antifraud provisions of the Securities Exchange Act of 1934, including *AOL Time Warner Securities Litigation*, (\$2.6 billion settlement), *In re Nuskin Enterprises, Inc. Securities Litigation*, Master File No. 2:14-cv-00033 (D. Utah), *In Re: Spectrum Pharmaceuticals, Inc. Securities Litigation*, Case No. 2:13-cv-00433 (D. Nev.), and *In re Omnivision Technologies, Inc. Litigation*, Case No.: 5:11-cv-05235 (N.D. Cal.). Mr. Goldman also prosecuted a number of insider trading cases brought against company insiders who, in violation of Section 16(b) of the Securities Exchange Act of 1934, engaged in short swing trading.

Mr. Goldman earned his undergraduate degree from the Pennsylvania State University and his law degree from the University of Kansas School of Law. He is a member of the Pennsylvania bar.

## **II. PAUL J. SCARLATO**

Paul Scarlato has concentrated his practice on the litigation of complex class actions since 1989. He has litigated numerous cases under the securities, consumer, antitrust and common law involving companies in a broad range of industries, and has litigated many cases involving financial and accounting fraud.

Mr. Scarlato has served in leadership roles in numerous class action cases, including, for example, as one of three lead attorneys for the class in *Kaufman v. Motorola, Inc.*, (N.D. IL), a securities fraud class action that settled just weeks before trial, one of the lead counsel in *Seidman v. American Mobile Systems, Inc.*, (E.D. Pa.), a securities class action that resulted in a settlement for the plaintiff class again on the eve of trial, co-lead counsel in *In re: Corel Corporation Securities Litigation* (E.D. Pa.). Mr. Scarlato is currently one of three lead lawyers in *Afzal v. BMW of North America, LLC*, and two lead lawyers in *Yao Yi Liu v. Wilmington Trust Company*. He serves on the plaintiffs' Executive Committee in *Vikram Bhatia, D.D.S. v. 3M Company*, Case No. 16-cv-01304 (D. Minn.), and is counsel in *In re Platinum and Palladium Antitrust Litigation*, Case No. 14-cv-09391 (S.D.N.Y.), *In re Treasury Securities Auction Antitrust Litigation*, Case No. 15-md-02673 (S.D.N.Y.), and *In re Liquid Aluminum Sulfate Antitrust Litigation*, Case No. 15-7827 (D.N.J.).

Mr. Scarlato graduated from Moravian College with a degree in accounting, and received his Juris Doctor degree from the Widener University School of Law. Thereafter he served as law clerk to the Honorable Nelson Diaz, of the Court of Common Pleas of Philadelphia County, and



then as law clerk to the Honorable James T. McDermott, Justice of the Pennsylvania Supreme Court. After his clerkships, and prior to becoming a litigator, Mr. Scarlato was a member of the tax department of a major accounting firm where he provided a broad range of accounting services to large business clients in a variety of industries.

Mr. Scarlato is a member of the bars of the Commonwealth of Pennsylvania and the State of New Jersey, and those of various federal district and circuit courts.

### **III. BRIAN D. PENNY**

Since joining the Firm in 2002, Mr. Penny has focused his practice on class action litigation principally in the areas of antitrust, consumer protection and securities fraud litigation. He was lead counsel in *Mirakay v. Dakota Growers Pasta Co.* (alleging false and misleading advertising of pasta products and resulting in a settlement valued at over \$23 million); *Logue v. West Penn Multi-Listing Service* (alleging price-fixing among brokers and multi-listing service and resulting in \$2.75 million settlement); *Allan v. Realcomp II* (E.D. Mich. 2010) (alleging price-fixing among brokers and multi-listing service and resulting in a \$3.25 million settlement); *Boland v. Columbia Multi-Listing Service* (D.S.C. 2009) (alleging price-fixing among brokers and multi-listing service and resulting in a \$1 million settlement); *Robertson v. Hilton-Head Multi-Listing Service* (D.S.C. 2009) (alleging price-fixing among brokers and multi-listing service).

Mr. Penny is currently serving as lead or interim co-lead counsel in *In re Class 8 Truck Transmission Indirect Purchaser Antitrust Litigation*, 11-cv-00009 (D. Del. 2009) (alleging antitrust conspiracy in the market for linehaul truck transmissions); *Bradach v. Pharmavite, et al.* (C.D. Cal. 2014) (alleging false and misleading advertising of vitamin E) and *Spence v. Basic Research LLC, et al.*, 14-cv-4945 (S.D.N.Y.) (alleging false advertising of weight loss pills).

Mr. Penny also serves on the executive committees in *In re Nexium* (Esomeprazole) Antitrust Litigation (D. Mass. 2012) (alleging generic suppression claims on behalf of end-payors), and *In Re NHL Concussion Litigation* (D. Minn. 2014) (alleging league failed to protect players from known risks of concussions). He is on the Third Party Discovery Committee in *In re Disposable Contact Lenses Antitrust Litigation*, 15-md-2626 (M.D. Fla.), and is actively engaged as class counsel in *In re Ductile Iron Pipe Fittings (DIPF) Direct Purchaser Antitrust Litigation* (D.N.J. 2012) (alleging price fixing in the market for DIPF); and *In re Target Corporation Customer Data Security Breach Litig.* (D. Minn. 2014) (alleging damages stemming from massive data breach).

Mr. Penny has also prosecuted numerous securities fraud class actions over the course of his career. He was a key member of the plaintiffs' teams that prosecuted *In re Broadcom Securities Litigation*, which resulted in a settlement of \$150 million for the class, and *AOL Time Warner Securities Litigation*, which resulted in a settlement of over \$2.5 billion for investors. Mr. Penny was also one of the lead attorneys representing the classes in a number of securities fraud actions arising out of stock option backdating, including, *In re Monster Worldwide, Inc. Securities Litigation* (\$47.5 million settlement), *In re Mercury Interactive Securities Litigation* (\$117.5 million settlement), *In re SafeNet, Inc. Securities Litigation* (\$25 million settlement), *Ramsey v. MRV Communications et al.* (\$10 million settlement), and *In re Semtech Securities Litigation* (\$20 million settlement).

Mr. Penny received his Bachelor of Arts degree from Davidson College, Davidson, North Carolina, and earned his Juris Doctor degree from Pennsylvania State University. After graduating from law school, Mr. Penny served as law clerk to the Honorable John T.J. Kelly, Jr., Senior Judge of the Superior Court of Pennsylvania. He has been named a Super Lawyer or

Rising Star each year since 2010. In 2015, Mr. Penny was one of four finalists for the American Antitrust Institute's Enforcement Award for Outstanding Antitrust Litigation Achievement by a Young Lawyer for his work on *Allen, et al. v. Realcomp Ltd., et al.*

#### IV. MELISSA FRY HAGUE

Melissa Hague has dedicated her career to the successful and diligent prosecution of complex mass tort cases. She is an advocate for consumer rights and victims injured as a result of defective medical devices and pharmaceutical drugs. She was recently appointed by Judge Saylor of the US District Court of Massachusetts to serve on the Plaintiffs' Steering Committee in *In Re: Zofran (Ondansetron) Products Liability Litigation*, MDL 2657 on behalf of children born with birth defects as a result of in utero exposure to the drug Zofran.

Ms. Hague has represented hundreds of clients who have suffered debilitating injuries caused by metal-on-metal hip implants, knee implants as well as transvaginal mesh implants. As a zealous advocate for her clients, Ms. Hague has developed an intricate level of industry knowledge in this area of the law relating to the failure to properly design and test medical devices. Her mass tort litigation experience includes:

- *In Re Ethicon, Inc., Pelvic Repair System Products Liability Litigation*, MDL 2327;
- *In re: DePuy Orthopaedics, Inc., ASR Hip Implant Products Liability Litigation*, MDL 2197;
- *In re: DePuy Orthopedics, Inc., Pinnacle Hip Implant Products Liability Litigation*, MDL 2244;
- *In re: Biomet M2A Magnum Hip Implant Products Liability Litigation*, MDL 2391;
- *In re: Stryker Rejuvenate & ABG II Hip Implant Litigation*, Ber-L-936-13;
- *In re: Zimmer NexGen Knee Implant Products Liability Litigation*, MDL 2272; and
- *In re: Human Tissue Products Liability Litigation*, MDL 1763.

Among her early successes, Ms. Hague was an integral part to the successful resolution of the *In re: Human Tissue Products Liability Litigation*. Ms. Hague successfully represented individual victims who received cadaver bone and tissue that was infected and not properly screened. As part of that litigation, Ms. Hague also represented dozens of families in lawsuits against funeral homes for the mutilation and illegal harvesting of body parts from their deceased loved ones. For her efforts, Ms. Hague was featured with partner Larry Cohan of Anapol Weiss in national news media regarding the Human Tissue litigation.

Ms. Hague currently serves on the Executive Committee for the American Association for Justice (AAJ) as well as the Board of Governors. She is the Immediate Past Chair of the New Lawyers Division for AAJ, she is the current Chair of AAJ's Marketing and Practice Development Committee and was recognized by the President of AAJ for her Distinguished Service in 2017. She is also a supporter of EndDD.org where she speaks to high school students in her community as well as other communities about the dangers of distracted driving.

Ms. Hague has been named a Rising Star in Pennsylvania Super Lawyers® since 2013. She was also selected for the state of New Jersey as The National Trial Lawyers: Top 40 Under 40 members, an elite group of the top attorneys under the age of 40 who have demonstrated excellence in their field.

**V. DOUGLAS J. BENCH, JR**

Doug Bench earned his Bachelor of Arts degree from the University of Pittsburgh and his Juris Doctor from Cornell Law School. Prior to joining the Firm in 2012, Mr. Bench served as a Death Penalty Law Clerk for the U.S. District Court in the Western District of Pennsylvania from 2010-2012. He was in private practice from 2008-2010 in Johnstown, Pennsylvania, and

taught undergraduate macro and micro economics at the University of Pittsburgh, Johnstown campus, from 2006-2008.

As a result of his economics background, Mr. Bench is naturally interested in antitrust violations, consumer fraud, and the market inefficiencies these violations engender. Mr. Bench primarily focuses on antitrust and consumer class actions. Representative cases include: *Kaufman v. CVS Caremark Corp.*, (alleging consumer protection violations); *Weintraub v. Pharmavite*, (same); *Mirakay v. Dakota Growers Pasta Co., Inc.* (alleging unfair trade practices and false advertising); *In re Nexium (Esomeprazole) Antitrust Litigation*, (alleging generic suppression claims on behalf of end-payors); *In re Ductile Iron Pipe Fittings (DIPF) Direct Purchaser Antitrust Litigation*, (alleging price fixing in the market for DIPF); *Allan v. Realcomp II*, (alleging antitrust violations) (\$3.25M settlement); *Boland v. Columbia Multi-Listing Service*, (antitrust) (\$1M settlement); *Robertson v. Hilton-Head Multi-Listing Service*, (antitrust) (settled on claims-paid basis). In the last few years, Mr. Bench has worked extensively on data breach cases, including *Leibovic v. United Shore Financial Services*, and *Collins, et al. v. Athens Orthopedic Clinic, P.A.*

Mr. Bench has authored the following law review articles: Douglas J. Bench, Collateral Review of Career Offender Sentences: The Case for Coram Nobis, 45 U. MICH. J. L. REFORM 155 (2011); Douglas J. Bench, What Constitutes a Violent Felony After Begay? 67 J. MO. B. 209 (2011).

### **CONCLUSION**

Goldman Scarlato & Penny, P.C. and partner, Mark S. Goldman, Esq., respectfully request an appointment to the Equifax Plaintiffs' Steering Committee for the consumer actions. The firm and its attorneys have the experience and dedication required to achieve a just result in

this case for all of the victims of the Equifax data breach. Mr. Goldman's contribution in the Anthem data breach case, and the firm's experience handling smaller data breach cases on its own, would benefit the Steering Committee and the case as a whole.

Date: January 31, 2018



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**CERTIFICATE OF SERVICE**

I, Mark Goldman, hereby certify, that on this day, true and correct copies of the foregoing Application for Appointment of Mark S. Goldman, Esq. and Goldman, Scarlato & Penny, P.C. as a Member of the Steering Committee for the Consumer Plaintiff Class were served on all counsel of record via the Court's ECF system.

Date: January 31, 2018



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Mark S. Goldman